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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,700	03/04/2002	Mikko Makipaa	4208-4076	2805

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MORGAN & FINNEGAN, L.L.P.
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

EXAMINER	
LASTRA, DANIEL	
ART UNIT	**PAPER NUMBER**
3622	

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/086,700	MAKIPAA, MIKKO	
	Examiner	Art Unit	
	DANIEL LASTRA	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *04/03/02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-27 have been examined. Application 10/086,700 (METHOD AND SYSTEM FOR PROVIDING CONTENT ITEMS TO USERS) has a filing date 03/04/2002

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the instant claims fail to recite the use of any type of technology (e.g. computer system) within the recited steps of providing a content item to a plurality of users.

Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

Although the claimed invention produces a useful, concrete and tangible result, since the claimed invention as a whole is not within the technological arts, as explained above, claims 1-26 are deemed to be directed to non-statutory subject matter.

Claim 25 recites "program code". One of the definition for "program code" is software and software per se is non-statutory.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. 6,023,686) in view of Liebowitz (US 5,812,545).

As per claim 1, Brown teaches:

A method of providing a content item to a plurality of users, comprising:

defining a collective earning threshold (see column 8, lines 29-37);

receiving a total collective payment from the plurality of users, wherein the total collective payment includes a plurality of individual user payments that are each

contributed by a respective one of the plurality of users (see column 8, lines 29-40; column 3, lines 62-67);

Brown fails to teach transmitting the content item at a premium quality level when the total collective payment is greater than or equal to the collective earning threshold and transmitting the content item at an impaired quality level when the total collective payment is less than the collective earning threshold. However, Liebowitz teaches a communication system that varies transmission rates prices based upon the quality of the transmission medium. Customers wanting to receive content at a higher quality level (i.e., receiving content using 16kpbs circuits) would have to pay more than receiving the same said content at a lower quality level (i.e., using 8 kbps circuits) (see column 19, lines 13-40; figure 10). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Brown system would collect group biddings to purchase content and if the group biddings are more or equal than the seller's collective earning threshold prices (i.e., Liebowitz asking price for transmitting said content at premium quality level) the said content would be transmitted at the higher quality level (i.e., using 16 kbps circuits). However, if the group biddings for receiving said content are less than the seller's collective earning threshold price (i.e., Liebowitz's asking price for transmitting said content at premium quality level), the said content would be transmitted at a lower quality level (i.e. using 8kbps circuits), as the users are not paying the premium quality price to receive said content. This way users would be charged accordingly to the quality of the content that they are receiving and

content providers would receive payment accordingly to the quality of the content that they are transmitting.

As per claim 2, Brown teaches:

The method of claim 1, wherein the step of defining a collective earning threshold comprises selecting a threshold value from a time-varying threshold function (see column 8, lines 18-29).

As per claim 3, Brown teaches:

The method of claim 1, further comprising the step of awarding a prize to one or more of the plurality of users according to a prize criterion (see column 8, lines 35-40).

As per claim 4, Brown teaches:

The method of claim 3, but does not expressly teach wherein the awarding step comprises awarding a prize to the user that has contributed the largest of the individual user payments. However, Official notice is taken that it is old and well known in the auction art to award prizes to users that have won the largest bid. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Brown would award prizes to the largest contributor of a total collective payment bid. Users would not participate in the Brown's bid pooling system, if one user would finish contributing for almost all the total collective payment unless that user is awarded with a prize that would compensate for what others users did not contribute.

As per claim 5, Brown teaches:

The method of claim 1, but does not expressly teach wherein the step of transmitting the content item at a downgraded quality comprises reducing the resolution

of images included in the content item. However, the same rejection applied to claim 1 is applied to claim 5.

As per claim 6, Brown teaches:

The method of claim 1, but fails to teach wherein the step of transmitting the content item at an impaired quality comprises reducing the size of one or more images included in the content item. However, the same rejection applied to claim 1 is applied to claim 6.

As per claim 7, Brown teaches:

The method of claim 1, but fails to teach wherein the step of transmitting the content item at an impaired quality comprises increasing the distortion of audio signals included in the content item. However, the same rejection applied to claim 1 is applied to claim 7.

As per claim 8, Brown teaches:

The method of claim 1, but does not expressly teach wherein the step of transmitting the content item at an impaired quality comprises interrupting transmission of the content item. However, the same rejection applied to claim 1 is applied to claim 8.

As per claim 9, Brown teaches:

The method of claim 1, but fails to teach further comprising the step of transmitting a request for additional individual user payments to the plurality of users when the total collective payment is less than the collective earning threshold. However, Official notice is taken that it is old and well known in the business art that when a group of people get together to purchase an item at a target price, the group would know in

real time how much money have been contributed and how much money is still needed to arrive at the target price. For example, if a group of people wants to purchase a $100,000 item and after some contribution from each individual member of the group, they are still $10,000 short, someone would send a message to the group to let them know so they can meet the target price. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that if the group total collective payment is less that the price of an item (i.e., collective earning threshold), Brown would let the group know so they can adjust their contribution and meet the target price.

As per claim 10, Brown teaches

The method of claim 1, but does not expressly teach further comprising the step of transmitting a request for additional individual user payments to the plurality of users when the total collective payment is within a predetermined range of the collective earning threshold. However, the same rejection applied to claim 9 is applied to claim 10.

As per claim 11, Brown teaches:

A system for providing a content item to a plurality of users, comprising:

means for defining a collective earning threshold;

means for receiving a total collective payment from the plurality of users, wherein the total collective payment includes a plurality of individual user payments that are each contributed by a respective one of the plurality of users;

means for transmitting the content item at a premium quality level when the total collective payment is greater than or equal to the collective earning threshold; and

means for transmitting the content item at an impaired quality level when the total collective payment is less than the collective earning threshold.

The same rejection applied to claim 1 is applied to claim 11.

As per claim 12, Brown teaches:

The system of claim 11, wherein the means for defining a collective earning threshold comprises selecting a threshold value from a time-varying threshold function. The same rejection applied to claim 2 is applied to claim 12.

As per claim 13, Brown teaches:

The system of claim 11, further comprising means for awarding a prize to one or more of the plurality of users according to a prize criterion. The same rejection applied to claim 3 is applied to claim 13.

As per claim 14, Brown teaches:

The system of claim 13, wherein the awarding step comprises means for awarding a prize to the user that has contributed the largest of the individual user payments. The same rejection applied to claim 4 is applied to claim 14.

As per claim 15, Brown teaches:

The system of claim 11, wherein the means for transmitting the content item at a downgraded quality comprises means for reducing the resolution of images included in the content item. The same rejection applied to claim 5 is applied to claim 15.

As per claim 16, Brown teaches:

The system of claim 11, wherein the means for transmitting the content item at an impaired quality comprises means for reducing the size of one or more images

included in the content item. The same rejection applied to claim 6 is applied to claim 16.

As per claim 17, Brown teaches:

The system of claim 11, wherein the means for transmitting the content item at an impaired quality comprises means for increasing the distortion of audio signals included in the content item. The same rejection applied to claim 7 is applied to claim 17.

As per claim 18, Brown teaches:

The system of claim 11, wherein the means for transmitting the content item at an impaired quality comprises means for interrupting transmission of the content item. The same rejection applied to claim 8 is applied to claim 18.

As per claim 19, Brown teaches:

The system of claim 11, further comprising means for transmitting a request for additional individual user payments to the plurality of users when the total collective payment is less than the collective earning threshold. The same rejection applied to claim 9 is applied to claim 19.

As per claim 20, Brown teaches:

The system of claim 11, further comprising means for transmitting a request for additional individual user payments to the plurality of users when the total collective payment is within a predetermined range of the collective earning threshold. The same rejection applied to claim 10 is applied to claim 20.

As per claim 21, Brown teaches:

A computer program product comprising a computer useable medium having computer program logic recorded thereon for enabling a processor in a computer system to provide a content item over a network to a plurality of users, the computer program logic comprising:

program code for enabling the processor to receive one or more individual user payments;

program code for enabling the processor to compare a sum of the individual user payments to a collective earning threshold;

program code for enabling the processor to transmit the content item at a premium quality level when the total collective payment is greater than or equal to the collective earning threshold; and

program code for enabling the processor to transmit the content item at an impaired quality level when the total collective payment is less than the collective earning threshold.

The same rejection applied to claim 1 is applied to claim 21.

As per claim 22, Brown teaches:

A method of providing a content item to a plurality of users, comprising:

defining a collective earning threshold;

receiving a total collective payment from the plurality of users, wherein the total collective payment includes a plurality of individual user payments that are each contributed by a respective one of the plurality of users; and

scheduling the content item for transmission when the total collective payment is greater than or equal to the collective earning threshold.

The same rejection applied to claim 1 is applied to claim 22.

As per claim 23, Brown teaches:

The method of claim 22, but does not expressly teach further comprising the step of identifying a stale payment when the total collective payment is less than the collective earning threshold and providing a content item reselection opportunity to the user that placed the stale payment. However, Official notice is taken that it is old and well known in the auction art that users that do not win the auction, lose the auction item but do not lose their money. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Brown would give users the option of reselecting another item to bid if the total collective payment is less than the seller's collecting earning threshold. Nobody would participate in the Brown's system if a user that does not win an auction, has the possibility of not only losing the auction item but also his bidding money.

As per claim 24, Brown teaches:

A system for providing a content item to a plurality of users, comprising:

means for defining a collective earning threshold;

means for receiving a total collective payment from the plurality of users, wherein the total collective payment includes a plurality of individual user payments that are each contributed by a respective one of the plurality of users; and

means for scheduling the content item for transmission when the total collective payment is greater than or equal to the collective earning threshold.

The same rejection applied to claim 22 is applied to claim 24.

As per claim 25, Brown teaches:

A computer program product comprising a computer useable medium having computer program logic recorded thereon for enabling a processor in a computer system to provide a content item over a network to a plurality of users, the computer program logic comprising: program code for enabling the processor to define a collective earning threshold;

program code for enabling the processor to receive a total collective payment from the plurality of users, wherein the total collective payment includes a plurality of individual user payments that are each contributed by a respective one of the plurality of users; and

program code for enabling the processor to schedule the content item for transmission when the total collective payment is greater than or equal to the collective earning threshold.

The same rejection applied to claim 22 is applied to claim 25.

As per claim 26, Brown teaches:

A method of providing a content item to a plurality of users, comprising:

defining a collective earning threshold, receiving a total collective payment from the plurality of users, wherein the total collective payment includes a plurality of

individual user payments that are each contributed by a respective one of the plurality of users; and

transmitting the content item in a manner that is based on a comparison between the total collective payment and the collective earning threshold.

The same rejection applied to claim 1 is applied to claim 26.

As per claim 27, Brown teaches:

A wireless communications device for receiving a content item from a content provider, the wireless communications device comprising:

means for selecting a content item from a list of content item offerings provided by the content provider;

means for sending an individual user payment for the selected content item to the content provider;

means for receiving a revenue indicator from the content provider, the revenue indicator indicating a comparison between a total collective payment and a collective earning threshold, wherein the total collective payment includes the individual user payment and one or more payments from other wireless communications devices; and means for receiving the selected content item from the content provider in a manner that is determined by the comparison between the total collective payment and the collective earning threshold. The same rejection applied to claim 1 is applied to claim 27. Brown does not teach wireless communication. However, Official notice is taken that it is old and well known in the computer art to transmit information via a wireless network. It would have been obvious to a person of ordinary skill in the art at the time

the application was made, to know that Brown would allow users to submit bids and communicate with his network system via a wireless connection, as this communication it is well known in the computer art.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Shkedy teaches a method for facilitating buyer-driven purchase orders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

The Examiner is scheduled to move to the new Alexandria office in April 2005 (or later). The Alexandria phone number would be 571-272-6720 and RightFax number 571-273-6720. The examiner's supervisor, Eric W. Stamber, new Alexandria number would be 571-272-6724. The current numbers would be in service until the move.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra
March 12, 2005

RAQUEL ALVAREZ
PRIMARY EXAMINER